

DECISION

THE COMPTROLLER GENERAL 24960
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:B-208744

DATE: April 22, 1983

MATTER OF:S.A.F.E. Export Corporation

DIGEST:

1. Contracting officer's nonresponsibility determination based on data supplied by another procurement activity which showed that protester had significant problems performing prior contracts, had suffered four default terminations, and had been determined nonresponsible on several occasions, was reasonable notwithstanding fact that protester had successfully performed several other contracts.
2. Fact that default terminations had been appealed to Armed Services Board of Contract Appeals does not eliminate such a termination as evidence of bidder's nonresponsibility.
3. Fact that protester may recently have been found responsible by other contracting officers does not show that contracting officer acted unreasonably in making nonresponsibility determination, because such determinations are judgmental and two contracting officers may reach opposite conclusions on similar facts.

S.A.F.E. Export Corporation protests the rejection of its quotation under request for quotations No. DAJA01-82-Q-0034 issued by the U.S. Army Southern European Task Force for an intrusion detection system and its installation in General's quarters, Verona, Italy. S.A.F.E. disputes the propriety of the contracting officer's determination that S.A.F.E. was nonresponsible because of its poor record of past performance. For the reasons that follow, we deny the protest.

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S.A.F.E. submitted the lowest quote at \$8,648.92, but since the procuring activity had no experience contracting with the firm, the contracting officer requested information concerning its responsibility from the U.S. Army Contracting Agency, Europe. That agency informed the contracting officer that it had determined S.A.F.E. responsible under two recent procurements for smoke detectors, based primarily on the fact that S.A.F.E. had an agreement with an experienced subcontractor for performance of the required installation work. While the agency indicated that it was not aware that the protester had, within the past year, been awarded a contract for intrusion alarm systems, it stated that S.A.F.E. had satisfactorily performed six relatively small dollar value contracts for the installation of smoke detectors.

The agency further stated that four S.A.F.E contracts had been recently terminated for default because of that firm's refusal to follow the contracting officer's directions and noted that S.A.F.E. had encountered difficulty with the agency in performing two other contracts. The agency also noted that our Office in S.A.F.E. Export Corporation, B-203346, January 15, 1982, 82-1 CPD 35, upheld its determination of nonresponsibility under a procurement for intrusion detection systems based on S.A.F.E.'s poor performance record and apparent lack of facilities. In this regard, the agency stated that as far as it could determine, S.A.F.E.'s U.S. address was merely a mail drop with no S.A.F.E. employees and that S.A.F.E. had no known plant or employees in Europe. Based on this report, the contracting officer determined that S.A.F.E. was not a responsible prospective contractor because it had "failed to perform satisfactorily during the past twelve months."

S.A.F.E. argues that the contracting officer's determination was unreasonable because he failed to consider that each of the default terminations has been appealed by S.A.F.E. to the Armed Services Board of Contract Appeals (ASBCA) and ignored the positive portions of the agency report which indicated that S.A.F.E. had been determined responsible under two procurements and had successfully completed eight contracts. S.A.F.E. also objects to the portions of the agency's report concerning that firm's lack of facilities as outdated, based on rumor and untrue.

Further, S.A.F.E. contends that much of the negative information in the report was more than 12 months old and complains that the agency failed to state that S.A.F.E. had in fact successfully installed intrusion detection systems like that called for under the subject procurement. Finally, S.A.F.E. argues that if the contracting officer truly wanted to investigate S.A.F.E.'s capabilities he would have contacted more than one source and maintains that the contracting officer and the agency deliberately attempted to construct a record in order to deny S.A.F.E. the award.

The determination of a prospective contractor's responsibility is the duty of the contracting officer. In making the determination, he is vested with a wide degree of discretion and business judgment. Generally, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination. See Amco Tool & Die Co., B-207191, February 28, 1983, 62 Comp. Gen. _____, 83-1 CPD _____. Here, we think that the contracting officer acted reasonably in relying on the information provided him by the agency and that that information provided a sufficient basis for his determination.

As far as S.A.F.E.'s appeals of its default terminations are concerned, a termination for default is a proper matter for consideration in determining bidder responsibility despite a pending appeal. Environmental Growth Chambers, B-210333, October 8, 1981, 81-2 CPD 286. Further, the fact that S.A.F.E. has recently been found responsible on other procurements and has been cited for "outstanding" performance on others does not necessarily mean that the determination here was unreasonable. Responsibility determinations are made based upon the circumstances of each procurement which exist at the time the contract is to be awarded. These determinations are inherently judgmental, and two people can reach opposite conclusions as to a firm's responsibility on the same facts, without either being unreasonable or acting in bad faith. GAVCO Corporation--Request for Reconsideration, B-207846.2, September 20, 1982, 82-2 CPD 242.

Although S.A.F.E. contends that the agency excluded information concerning its two contracts for the installation of intrusion detection equipment and included information which was outdated, it does not dispute that several of its contracts were terminated for default nor has it provided any evidence that the agency's problems verifying the existence of S.A.F.E.'s facilities were not legitimate. In short, while some of the evidence supplied to the contracting officer was favorable to S.A.F.E. and possibly some evidence favorable to S.A.F.E. was not presented, it is clear that there was sufficient evidence in the report for the contracting officer to conclude that S.A.F.E. had a history of performance problems, and that similar problems could reasonably be anticipated under the subject procurement.

With respect to S.A.F.E.'s assertion that the contracting officer acted in bad faith by not seeking out information from sources other than the agency, we point out that the nature and extent of the information needed to assure a contracting officer that a firm will meet its contractual obligation necessarily is for the contracting officer's judgment. Jack Roach Cadillac--Request for Reconsideration, B-200847.3, August 28, 1981, 81-2 CPD 183. Here, considering the relatively low dollar value of this procurement, we do not believe that the contracting officer was unreasonable in relying on information supplied by an agency which had considerable experience in dealing with S.A.F.E. or in reaching a negative conclusion about S.A.F.E. in light of the negative nature of much of the information. Since S.A.F.E. has done no more than allege that the contracting officer acted arbitrarily and on the basis of an improper motive, we must conclude that S.A.F.E. has not met its burden of proof in this regard.

The protest is denied.

for *Harry D. Van Cleave*
Comptroller General
of the United States